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HOUSE BILL 830

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TRUSTS; AMENDING THE UNIFORM TRUST CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 46A-1-103 NMSA 1978 (being Laws 2003, Chapter 122, Section 1-103) is amended to read:

"46A-1-103. DEFINITIONS.--As used in the Uniform Trust Code:

A. "action", with respect to an act of a trustee, includes a failure to act;

B. "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 2041 and Paragraph (1) of Subsection (c) of Section 2514 of the Internal Revenue Code of 1986, as amended;

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1           ~~[B.]~~ C. "beneficiary" means a person that:

2                   (1) has a present or future beneficial  
3 interest in a trust, vested or contingent; or

4                   (2) in a capacity other than that of trustee,  
5 holds a power of appointment over trust property;

6           ~~[G.]~~ D. "charitable trust" means a trust or portion  
7 of a trust created for a charitable purpose described in  
8 Subsection A of Section ~~[4-405 of the Uniform Trust Code]~~  
9 46A-4-405 NMSA 1978;

10           ~~[D.]~~ E. "conservator" means a person appointed by  
11 the court to administer the estate of a minor or adult  
12 individual;

13           ~~[E.]~~ F. "environmental law" means a federal, state  
14 or local law, rule, regulation or ordinance relating to  
15 protection of the environment;

16           ~~[F.]~~ G. "guardian" means a person appointed by the  
17 court or a parent to make decisions regarding the support,  
18 care, education, health and welfare of a minor or adult person.

19 ~~[The term]~~ "Guardian" does not include a guardian ad litem;

20           ~~[G.]~~ H. "interests of the beneficiaries" means the  
21 beneficial interests provided in the terms of the trust;

22           ~~[H.]~~ I. "jurisdiction", with respect to a  
23 geographic area, includes a state or country;

24           ~~[I.]~~ J. "person" means an individual, corporation,  
25 business trust, estate, trust, partnership, limited liability

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1 company, association, joint venture, government, governmental  
2 subdivision, agency or instrumentality, public corporation or  
3 any other legal or commercial entity;

4 ~~[J-]~~ K. "power of withdrawal" means an exercisable  
5 general power of appointment other than a power:

6 (1) exercisable by a trustee and limited by an  
7 ascertainable standard; or

8 (2) exercisable by another person only upon  
9 consent of the trustee or a person holding an adverse interest;

10 ~~[K-]~~ L. "property" means anything that may be the  
11 subject of ownership, whether real or personal, legal or  
12 equitable, or any interest therein;

13 ~~[L-]~~ M. "qualified beneficiary" means a beneficiary  
14 who, on the date the beneficiary's qualification is determined:

15 (1) is a distributee or permissible  
16 distributee of trust income or principal;

17 (2) would be a distributee or permissible  
18 distributee of trust income or principal if the interests of  
19 the distributees described in Paragraph (1) of this subsection  
20 terminated on that date without causing the trust to terminate;  
21 or

22 (3) would be a distributee or permissible  
23 distributee of trust income or principal if the trust  
24 terminated on that date;

25 ~~[M-]~~ N. "revocable", as applied to a trust, means

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1 revocable by the settlor without the consent of the trustee or  
2 a person holding an adverse interest;

3 ~~[N-]~~ Q. "settlor" means a person, including a  
4 testator, who creates or contributes property to a trust. If  
5 more than one person creates or contributes property to a  
6 trust, each person is a settlor of the portion of the trust  
7 property attributable to that person's contribution, except to  
8 the extent another person has the power to revoke or withdraw  
9 that portion;

10 ~~[O-]~~ P. "spendthrift provision" means a term of a  
11 trust that restrains both voluntary and involuntary transfer of  
12 a beneficiary's interest;

13 ~~[P-]~~ Q. "state" means a state of the United States,  
14 the District of Columbia, Puerto Rico, the United States Virgin  
15 Islands or any territory or insular possession subject to the  
16 jurisdiction of the United States. ~~[The term]~~ "State" includes  
17 an Indian tribe or band recognized by federal law or formally  
18 acknowledged by a state;

19 ~~[Q-]~~ R. "terms of a trust" means the manifestation  
20 of the settlor's intent regarding a trust's provisions as  
21 expressed in the trust instrument or as may be established by  
22 other evidence that would be admissible in a judicial  
23 proceeding;

24 ~~[R-]~~ S. "trust instrument" means an instrument  
25 executed by the settlor that contains terms of the trust,

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1 including any amendments thereto; and

2 ~~[S-]~~ T. "trustee" includes an original trustee, an  
3 additional trustee, a successor trustee and a co-trustee."

4 Section 2. Section 46A-1-105 NMSA 1978 (being Laws 2003,  
5 Chapter 122, Section 1-105) is amended to read:

6 "46A-1-105. DEFAULT AND MANDATORY RULES.--

7 A. Except as otherwise provided in the terms of the  
8 trust, the Uniform Trust Code governs the duties and powers of  
9 a trustee, relations among trustees and the rights and  
10 interests of a beneficiary.

11 B. The terms of a trust prevail over any provision  
12 of the Uniform Trust Code except:

13 (1) the requirements for creating a trust;

14 (2) the duty of a trustee to act in good faith  
15 and in accordance with the terms and purposes of the trust and  
16 the interests of the beneficiaries;

17 (3) the requirement that a trust and its terms  
18 be for the benefit of its beneficiaries and that the trust have  
19 a purpose that is lawful, not contrary to public policy and  
20 possible to achieve;

21 (4) the power of the court to modify or  
22 terminate a trust under Sections [~~4-410 through 4-416 of the~~  
23 ~~Uniform Trust Code~~] 46A-4-410 through 46A-4-416 NMSA 1978;

24 (5) the effect of a spendthrift provision and  
25 the rights of certain creditors and assignees to reach a trust

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1 as provided in Chapter 46A, Article 5 [~~of the Uniform Trust~~  
2 Code] NMSA 1978;

3 (6) the power of the court under Section  
4 [~~7-702 of the Uniform Trust Code~~] 46A-7-702 NMSA 1978 to  
5 require, dispense with or modify or terminate a bond;

6 (7) the power of the court under Subsection B  
7 of Section [~~7-708 of the Uniform Trust Code~~] 46A-7-708 NMSA  
8 1978 to adjust a trustee's compensation specified in the terms  
9 of the trust that is unreasonably low or high;

10 (8) [~~except for a qualified beneficiary who~~  
11 ~~has not attained twenty-five years of age~~] the duty under  
12 Paragraphs (2) and (3) of Subsection B of Section [~~8-813 of the~~  
13 ~~Uniform Trust Code~~] 46A-8-813 NMSA 1978 to notify qualified  
14 beneficiaries of an irrevocable trust who have attained twenty-  
15 five years of age of the existence of the trust, of the  
16 identity of the trustee and of their right to request reports  
17 of the trustee;

18 (9) the duty under Subsection A of Section  
19 [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA 1978 to  
20 respond to the request of a beneficiary of an irrevocable trust  
21 for a trustee's reports and other information reasonably  
22 related to the administration of a trust;

23 (10) the effect of an exculpatory term under  
24 Section [~~10-1007 of the Uniform Trust Code~~] 46A-10-1007 NMSA  
25 1978;

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1 (11) the rights under Sections [~~10-1008~~  
2 ~~through 10-1012 of the Uniform Trust Code~~] 46A-10-1008 through  
3 46A-10-1012 NMSA 1978 of a person other than a trustee or  
4 beneficiary;

5 (12) periods of limitation for commencing a  
6 judicial proceeding;

7 (13) the power of the court to take such  
8 action and exercise such jurisdiction as may be necessary in  
9 the interests of justice; and

10 (14) the subject-matter jurisdiction of the  
11 court [~~and venue for commencing a proceeding~~] as provided in  
12 [~~Sections 2-203 and 2-204 of the Uniform Trust Code~~] Section  
13 46A-2-203 NMSA 1978."

14 Section 3. Section 46A-1-110 NMSA 1978 (being Laws 2003,  
15 Chapter 122, Section 1-110) is amended to read:

16 "46A-1-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.--

17 A. Whenever notice to qualified beneficiaries of a  
18 trust is required under the Uniform Trust Code, the trustee  
19 must also give notice to any other beneficiary who has sent the  
20 trustee a request for notice.

21 B. A charitable organization expressly designated  
22 to receive distributions under the terms of a charitable trust  
23 [~~or a~~] has the rights of a qualified beneficiary under the  
24 Uniform Trust Code if the charitable organization, on the date  
25 the charitable organization's qualification is being

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1 determined:

2 (1) is a distributee or permissible  
3 distributee of trust income or principal;

4 (2) would be a distributee or permissible  
5 distributee of trust income or principal upon the termination  
6 of the interests of other distributees or permissible  
7 distributees then receiving or eligible to receive  
8 distributions; or

9 (3) would be a distributee or permissible  
10 distributee of trust income or principal if the trust  
11 terminated on that date.

12 C. A person appointed to enforce a trust created  
13 for the care of an animal or another noncharitable purpose as  
14 provided in Section [4-408 or 4-409 of the Uniform Trust Code]  
15 46A-4-408 or 46A-4-409 NMSA 1978 has the rights of a qualified  
16 beneficiary under [that] the Uniform Trust Code.

17 [E.] D. The attorney general of this state has the  
18 rights of a qualified beneficiary with respect to a charitable  
19 trust having its principal place of administration in this  
20 state."

21 Section 4. Section 46A-3-301 NMSA 1978 (being Laws 2003,  
22 Chapter 122, Section 3-301) is amended to read:

23 "46A-3-301. REPRESENTATION--BASIC EFFECT.--

24 A. Notice to a person who may represent and bind  
25 another person under [this] Chapter 46A, Article 3 NMSA 1978

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1 has the same effect as if notice were given directly to the  
2 other person.

3 B. The consent of a person who may represent and  
4 bind another person under ~~[this]~~ Chapter 46A, Article 3 NMSA  
5 1978 is binding on the person represented unless the person  
6 represented objects to the representation before the consent  
7 would otherwise have become effective.

8 C. Except as otherwise provided in Sections ~~[4-411~~  
9 ~~and 6-602 of the Uniform Trust Code]~~ 46A-4-411 and 46A-6-602  
10 NMSA 1978, a person who under ~~[this]~~ Chapter 46A, Article 3  
11 NMSA 1978 may represent a settlor who lacks capacity may  
12 receive notice and give a binding consent on the settlor's  
13 behalf.

14 D. A settlor may not represent or bind a  
15 beneficiary under Chapter 46A, Article 3 NMSA 1978 with respect  
16 to the termination or modification of a trust under Subsection  
17 A of Section 46A-4-411 NMSA 1978."

18 Section 5. Section 46A-4-411 NMSA 1978 (being Laws 2003,  
19 Chapter 122, Section 4-411) is amended to read:

20 "46A-4-411. MODIFICATION OR TERMINATION OF NONCHARITABLE  
21 IRREVOCABLE TRUST BY CONSENT.--

22 A. A noncharitable irrevocable trust may be  
23 modified or terminated upon consent of the settlor and all  
24 beneficiaries, even if the modification or termination is  
25 inconsistent with a material purpose of the trust. A settlor's

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1 power to consent to a trust's modification or termination may  
2 be exercised by an agent under a power of attorney only to the  
3 extent expressly authorized by the power of attorney or the  
4 terms of the trust; by the settlor's conservator with the  
5 approval of the court supervising the conservatorship if an  
6 agent is not so authorized; or by the settlor's guardian with  
7 the approval of the court supervising the guardianship if an  
8 agent is not so authorized and a conservator has not been  
9 appointed.

10 B. A noncharitable irrevocable trust may be  
11 terminated upon consent of all of the beneficiaries if the  
12 court concludes that continuance of the trust is not necessary  
13 to achieve any material purpose of the trust. A noncharitable  
14 irrevocable trust may be modified upon consent of all of the  
15 beneficiaries if the court concludes that modification is not  
16 inconsistent with a material purpose of the trust.

17 C. A spendthrift provision in the terms of the  
18 trust is not presumed to constitute a material purpose of the  
19 trust.

20 D. Upon termination of a trust under Subsection A  
21 or B of this section, the trustee shall distribute the trust  
22 property as agreed by the beneficiaries.

23 E. If not all of the beneficiaries consent to a  
24 proposed modification or termination of the trust under  
25 Subsection A or B of this section, the modification or

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1 termination may be approved by the court if the court is  
2 satisfied that:

3 (1) if all of the beneficiaries had consented,  
4 the trust could have been modified or terminated under this  
5 section; and

6 (2) the interests of a beneficiary who does  
7 not consent will be adequately protected."

8 Section 6. Section 46A-5-501 NMSA 1978 (being Laws 2003,  
9 Chapter 122, Section 5-501) is amended to read:

10 "46A-5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR  
11 ASSIGNEE.--To the extent a beneficiary's interest is [~~not~~  
12 ~~protected by~~] subject to a spendthrift provision, the court may  
13 authorize a creditor or assignee of the beneficiary to reach  
14 the beneficiary's interest by attachment of present or future  
15 distributions to or for the benefit of the beneficiary or other  
16 means. The court may limit the award to such relief as is  
17 appropriate under the circumstances."

18 Section 7. Section 46A-5-503 NMSA 1978 (being Laws 2003,  
19 Chapter 122, Section 5-503) is amended to read:

20 "46A-5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

21 A. As used in this section, "child" includes any  
22 person for whom an order or judgment for child support has been  
23 entered in this or another state.

24 [~~B. Even if a trust contains a spendthrift~~  
25 ~~provision, a beneficiary's child, spouse or former spouse who~~

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1 ~~has a judgment or court order against the beneficiary for~~  
2 ~~support or maintenance, or a judgment creditor who has provided~~  
3 ~~services for the protection of a beneficiary's interest in the~~  
4 ~~trust, may obtain from a court an order attaching present or~~  
5 ~~future distributions to or for the benefit of the beneficiary.~~

6 ~~C. A spendthrift provision is unenforceable against~~  
7 ~~a claim of this state or the United States to the extent a~~  
8 ~~statute of this state or federal law so provides.]~~

9 B. A spendthrift provision is unenforceable  
10 against:

11 (1) a beneficiary's child, spouse or former  
12 spouse who has a judgment or court order against the  
13 beneficiary for support or maintenance;

14 (2) a judgment creditor who has provided  
15 services for the protection of a beneficiary's interest in the  
16 trust; and

17 (3) a claim of this state or the United States  
18 to the extent a statute of this state or federal law so  
19 provides.

20 C. A claimant against whom a spendthrift provision  
21 cannot be enforced may obtain from a court an order attaching  
22 present or future distributions to or for the benefit of the  
23 beneficiary. The court may limit the award to such relief as  
24 is appropriate under the circumstances."

25 Section 8. Section 46A-5-504 NMSA 1978 (being Laws 2003,

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1 Chapter 122, Section 5-504) is amended to read:

2 "46A-5-504. DISCRETIONARY TRUSTS--EFFECT OF  
3 STANDARD.--

4 A. As used in this section, "child" includes any  
5 person for whom an order or judgment for child support has been  
6 entered in this or another state.

7 B. Except as otherwise provided in Subsection C of  
8 this section, whether or not a trust contains a spendthrift  
9 provision, a creditor of a beneficiary may not compel a  
10 distribution that is subject to the trustee's discretion, even  
11 if:

12 (1) the discretion is expressed in the form of  
13 a standard of distribution; or

14 (2) the trustee has abused the discretion.

15 C. To the extent a trustee has not complied with a  
16 standard of distribution or has abused a discretion:

17 (1) a distribution may be ordered by the court  
18 to satisfy a judgment or court order against the beneficiary  
19 for support or maintenance of the beneficiary's child, spouse  
20 or former spouse; and

21 (2) the court shall direct the trustee to pay  
22 to the child, spouse or former spouse such amount as is  
23 equitable under the circumstances but not more than the amount  
24 the trustee would have been required to distribute to or for  
25 the benefit of the beneficiary had the trustee complied with

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1 the standard or not abused the discretion.

2 D. This section does not limit the right of a  
3 beneficiary to maintain a judicial proceeding against a trustee  
4 for an abuse of discretion or failure to comply with a standard  
5 for distribution.

6 E. A creditor may not reach the interest of a  
7 beneficiary who is also a trustee or co-trustee, or otherwise  
8 compel a distribution, if the trustee's discretion to make  
9 distributions for the trustee's own benefit is limited by an  
10 ascertainable standard."

11 Section 9. Section 46A-5-506 NMSA 1978 (being Laws 2003,  
12 Chapter 122, Section 5-506) is amended to read:

13 "46A-5-506. OVERDUE DISTRIBUTION.--

14 A. Whether or not a trust contains a spendthrift  
15 provision, a creditor or assignee of a beneficiary may reach a  
16 mandatory distribution of income or principal, including a  
17 distribution upon termination of the trust, if the trustee has  
18 not made the distribution to the beneficiary within a  
19 reasonable time after the designated distribution date.

20 B. As used in this section, "mandatory  
21 distribution" means a distribution of income or principal that  
22 the trustee is required to make to a beneficiary under the  
23 terms of the trust, including a distribution upon termination  
24 of the trust. "Mandatory distribution" excludes a distribution  
25 subject to the exercise of the trustee's discretion regardless

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1 of whether the terms of the trust:

2 (1) include a support or other standard to  
3 guide the trustee in making distribution decisions; or

4 (2) provide that the trustee "may" or "shall"  
5 make discretionary distributions, including distributions  
6 pursuant to a support or other standard."

7 Section 10. Section 46A-6-602 NMSA 1978 (being Laws 2003,  
8 Chapter 122, Section 6-602) is amended to read:

9 "46A-6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.--

10 A. Unless the terms of a trust expressly provide  
11 that the trust is irrevocable, the settlor may revoke or amend  
12 the trust. This subsection does not apply to a trust created  
13 under an instrument executed before the effective date of the  
14 Uniform Trust Code.

15 B. If a revocable trust is created or funded by  
16 more than one settlor:

17 (1) to the extent the trust consists of  
18 community property, the trust may be revoked by either spouse  
19 acting alone but may be amended only by joint action of both  
20 spouses; [and]

21 (2) to the extent the trust consists of  
22 property other than community property, each settlor may revoke  
23 or amend the trust with regard to the portion of the trust  
24 property attributable to that settlor's contribution; and

25 (3) upon the revocation or amendment of the

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1 trust by fewer than all of the settlors, the trustee shall  
2 promptly notify the other settlors of the revocation or  
3 amendment.

4 C. The settlor may revoke or amend a revocable  
5 trust:

6 (1) by substantial compliance with a method  
7 provided in the terms of the trust; or

8 (2) if the terms of the trust do not provide a  
9 method or the method provided in the terms is not expressly  
10 made exclusive, by:

11 (a) a later will or codicil that  
12 expressly refers to the trust or specifically devises property  
13 that would otherwise have passed according to the terms of the  
14 trust; or

15 (b) any other method manifesting clear  
16 and convincing evidence of the settlor's intent.

17 D. Upon revocation of a revocable trust, the  
18 trustee shall deliver the trust property as the settlor  
19 directs.

20 E. A settlor's powers with respect to revocation,  
21 amendment or distribution of trust property may be exercised by  
22 an agent under a power of attorney only to the extent expressly  
23 authorized by the terms of the trust or the power.

24 F. A conservator of the settlor or, if no  
25 conservator has been appointed, a guardian of the settlor may

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1 exercise a settlor's powers with respect to revocation,  
2 amendment or distribution of trust property only with the  
3 approval of the court supervising the conservatorship or  
4 guardianship.

5 G. A trustee who does not know that a trust has  
6 been revoked or amended is not liable to the settlor or  
7 settlor's successors in interest for distributions made and  
8 other actions taken on the assumption that the trust had not  
9 been amended or revoked."

10 Section 11. Section 46A-6-603 NMSA 1978 (being Laws 2003,  
11 Chapter 122, Section 6-603) is amended to read:

12 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

13 A. While a trust is revocable and the settlor has  
14 capacity to revoke the trust, rights of the beneficiaries are  
15 subject to the control of, and the duties of the trustee are  
16 owed exclusively to, the settlor.

17 ~~[B. If a revocable trust has more than one settlor,~~  
18 ~~the duties of the trustee are owed to all of the settlors~~  
19 ~~having capacity to revoke the trust.~~

20 ~~G.]~~ B. During the period the power may be  
21 exercised, the holder of a power of withdrawal has the rights  
22 of a settlor of a revocable trust under this section to the  
23 extent of the property subject to the power."

24 Section 12. Section 46A-8-802 NMSA 1978 (being Laws 2003,  
25 Chapter 122, Section 8-802) is amended to read:

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1           "46A-8-802. DUTY OF LOYALTY.--

2           A. A trustee shall administer the trust solely in  
3 the interests of the beneficiaries.

4           B. Subject to the rights of persons dealing with or  
5 assisting the trustee as provided in Section [~~10-1011 of the~~  
6 ~~Uniform Trust Code~~] 46A-10-1011 NMSA 1978, a sale, encumbrance  
7 or other transaction involving the investment or management of  
8 trust property entered into by the trustee for the trustee's  
9 own personal account or [~~which~~] that is otherwise affected by a  
10 conflict between the trustee's fiduciary and personal interests  
11 is voidable by a beneficiary affected by the transaction  
12 unless:

13                       (1) the transaction was authorized by the  
14 terms of the trust;

15                       (2) the transaction was approved by the court;

16                       (3) the beneficiary consented to the trustee's  
17 conduct, ratified the transaction or released the trustee in  
18 compliance with Section [~~10-1008 of the Uniform Trust Code~~]  
19 46A-10-1008 NMSA 1978; or

20                       (4) the transaction involved a contract  
21 entered into or claim acquired by the trustee before the person  
22 became or contemplated becoming trustee.

23           C. A sale, encumbrance or other transaction  
24 involving the investment or management of trust property is  
25 presumed to be affected by a conflict between personal and

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1 fiduciary interests if it is entered into by the trustee with:

- 2 (1) the trustee's spouse;
- 3 (2) the trustee's descendants, siblings,  
4 parents or the spouse of any of them;
- 5 (3) an agent or attorney of the trustee; or
- 6 (4) a corporation or other person or  
7 enterprise in which the trustee, or a person that owns a  
8 significant interest in the trustee, has an interest that might  
9 affect the trustee's best judgment.

10 D. A transaction between a trustee and a  
11 beneficiary that does not concern trust property but that  
12 occurs during the existence of the trust or while the trustee  
13 retains significant influence over the beneficiary and from  
14 which the trustee obtains an advantage is voidable by the  
15 beneficiary unless the trustee establishes that the transaction  
16 was fair to the beneficiary.

17 E. A transaction not concerning trust property in  
18 which the trustee engages in the trustee's individual capacity  
19 involves a conflict between personal and fiduciary interests if  
20 the transaction concerns an opportunity properly belonging to  
21 the trust.

22 F. An investment by a trustee in securities of an  
23 investment company or investment trust to which the trustee, or  
24 its affiliate, provides services in a capacity other than as  
25 trustee is not presumed to be affected by a conflict between

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1 personal and fiduciary interests if the investment otherwise  
2 complies with the Uniform Prudent Investor Act. In addition to  
3 its compensation for acting as trustee, the trustee may be  
4 compensated by the investment company or investment trust for  
5 providing those services out of fees charged to the trust. If  
6 the trustee received compensation from the investment company  
7 or investment trust for providing investment advisory or  
8 investment management services, the trustee at least annually  
9 [notifies] shall notify the persons entitled under Section  
10 [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA 1978 to  
11 receive a copy of the trustee's annual report of the rate and  
12 method by which [the] that compensation was determined.

13 G. In voting shares of stock or in exercising  
14 powers of control over similar interests in other forms of  
15 enterprise, the trustee shall act in the best interests of the  
16 beneficiaries. If the trust is the sole owner of a corporation  
17 or other form of enterprise, the trustee shall elect or appoint  
18 directors or other managers who will manage the corporation or  
19 enterprise in the best interests of the beneficiaries.

20 H. This section does not preclude the following  
21 transactions, if fair to the beneficiaries:

22 (1) an agreement between a trustee and a  
23 beneficiary relating to the appointment or compensation of the  
24 trustee;

25 (2) payment of reasonable compensation to the

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1 trustee;

2 (3) a transaction between a trust and another  
3 trust, decedent's estate or conservatorship of which the  
4 trustee is a fiduciary or in which a beneficiary has an  
5 interest;

6 (4) a deposit of trust money in a regulated  
7 financial-service institution operated by the trustee; or

8 (5) an advance by the trustee of money for the  
9 protection of the trust.

10 I. The court may appoint a special fiduciary to  
11 make a decision with respect to any proposed transaction that  
12 might violate this section if entered into by the trustee."

13 Section 13. Section 46A-8-814 NMSA 1978 (being Laws 2003,  
14 Chapter 122, Section 8-814) is amended to read:

15 "46A-8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

16 A. Notwithstanding the breadth of discretion  
17 granted to a trustee in the terms of the trust, including the  
18 use of such terms as "absolute", "sole" or "uncontrolled", the  
19 trustee shall exercise a discretionary power in good faith and  
20 in accordance with the terms and purposes of the trust and the  
21 interests of the beneficiaries.

22 B. Subject to Subsection D of this section, and  
23 unless the terms of the trust expressly indicate that a rule in  
24 this subsection does not apply:

25 (1) a person other than a settlor who is a

underscored material = new  
[bracketed material] = delete

1 beneficiary and trustee of a trust that confers on the trustee  
2 a power to make discretionary distributions to or for the  
3 trustee's personal benefit may exercise the power only in  
4 accordance with an ascertainable standard [~~relating to the~~  
5 ~~trustee's individual health, education, support or maintenance~~  
6 ~~within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of~~  
7 ~~the Internal Revenue Code of 1986, as amended~~]; and

8 (2) a trustee may not exercise a power to make  
9 discretionary distributions to satisfy a legal obligation of  
10 support that the trustee personally owes another person.

11 C. A power whose exercise is limited or prohibited  
12 by Subsection B of this section may be exercised by a majority  
13 of the remaining trustees whose exercise of the power is not so  
14 limited or prohibited. If the power of all trustees is so  
15 limited or prohibited, the court may appoint a special  
16 fiduciary with authority to exercise the power.

17 D. Subsection B of this section does not apply to:

18 (1) a power held by the settlor's spouse who  
19 is the trustee of a trust for which a marital deduction, as  
20 defined in Section 2056(b)(5) or [~~2523(b)(5)~~] 2523(e) of the  
21 Internal Revenue Code of 1986, as amended, was previously  
22 allowed;

23 (2) any trust during any period that the trust  
24 may be revoked or amended by its settlor; or

25 (3) a trust if contributions to the trust

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underscoring material = new  
[bracketed material] = delete

1 qualify for the annual exclusion under Section 2503(c) of the  
2 Internal Revenue Code of 1986, as amended."

3 Section 14. Section 46A-8-815 NMSA 1978 (being Laws 2003,  
4 Chapter 122, Section 8-815) is amended to read:

5 "46A-8-815. GENERAL POWERS OF TRUSTEE.--

6 A. A trustee, without authorization by the court,  
7 may exercise:

8 (1) powers conferred by the terms of the  
9 trust; ~~[or]~~ and

10 (2) except as limited by the terms of the  
11 trust:

12 (a) all powers over the trust property  
13 that an unmarried competent owner has over individually owned  
14 property;

15 (b) any other powers appropriate to  
16 achieve the proper investment, management and distribution of  
17 the trust property; and

18 (c) any other powers conferred by the  
19 Uniform Trust Code.

20 B. The exercise of a power is subject to the  
21 fiduciary duties prescribed by ~~[this]~~ Chapter 46A, Article 8  
22 NMSA 1978."